

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NORTH CAROLINA

AUG 18 1993

In Re:

ROGER M. BAILEY, and  
LENORE L. BAILEY,

Debtors.

Case No. 91-10343  
Chapter 13 J. BARON GROSHON  
DEPUTY

JUDGEMENT ENTERED ON AUG 18 1993

ORDER OVERRULING DEBTORS' OBJECTION TO CLAIM

This matter is before the court on the debtors' Objection to Claim of Associates Commercial Corporation. Associates filed a deficiency claim resulting from the sale of 1989 Peterbilt Truck/Tractor which secured a debt from debtors to Associates. After considering the record and the appropriate case law and statutes the court concludes that the debtors' Objection should be overruled and Associates' claim should be allowed.

**FINDINGS OF FACT**

1. On October 10, 1989 Associates financed the purchase of a 1989 Peterbilt Truck/Tractor, Model 379, serial number 1XP5DB9XOKN283672 for the debtors. Debtors granted Associates a security interest in the tractor.
2. Debtors initiated this Chapter 13 case on June 11, 1991. Pursuant to the terms of Debtors' plan, Associates was to receive direct monthly payments on account for the tractor.
3. On July 5, 1991 Associates filed a motion for relief from stay and on July 16, 1991 Associates filed an objection to confirmation of the debtors' plan. The motion for relief from stay reflected two values for the tractor: \$52,000.00 wholesale and \$57,150.00 retail.

4. A hearing was held on August 20, 1991 when the court considered both the relief from stay and the objection to confirmation. An Order was entered on September 1, 1991 which denied the relief from stay and objection to confirmation, and amended the debtors' plan to reflect the following:

- a. The value of the tractor was set at \$57,150.00;
- b. The balance of the debt was approximately \$60,991.29;
- c. Associates was to receive \$1,673.10 per month for 42 months as adequate protection payments.

5. On May 12, 1992 Associates again filed a motion for relief from stay alleging that the debtors failed to make the monthly payments, resulting in a post-petition arrearage of \$6,588.95. The motion included two values for the tractor: \$35,992.00 wholesale and \$47,990.00 retail.

6. On July 21, 1992 a consent Order was entered granting Associates relief from stay and allowing Associates to foreclose on the tractor.

7. On August 10, 1992 Associates sold the tractor at public auction in Knoxville, Tennessee for \$36,500.00.

8. Associates filed a proof of claim on March 5, 1993 for \$23,002.21 representing the balance due after application of the sale proceeds.

9. On April 23, 1993 the debtors filed an objection to Associates deficiency claim which is the subject of this Order.

## DISCUSSION

The situation giving rise to the objection to claim is one that arises frequently in both Chapter 13's and Chapter 11's. The practice in this court has been to allow a creditor to file a proof of claim for a deficiency resulting from the sale of collateral, pursuant to an order granting relief from stay, when the proceeds of such sale do not satisfy the secured claim. This practice stems principally from § 506(a) of the Bankruptcy Code -- valuation of secured claims. The central issue for a deficiency claim is valuation of the collateral upon disposition. The value at disposition determines the creditor's secured claim and any remaining balance due on the debt may be eligible for an unsecured deficiency claim. In this case the court concludes that the value of the collateral at disposition warrants the deficiency claim filed by Associates, and as such, Associates claim for a deficiency should be allowed and the debtors' objection to the claim overruled.

### A. Creditor's Right to a Deficiency Claim.

The debtor, the Trustee, or presumably, any interested party has a right to challenge the deficiency claim by filing an objection to the claim. Absent a meritorious objection, the court generally allows the claim as an unsecured claim in the debtors plan.

The authority for allowing the deficiency under the Bankruptcy Code or the Rules is not straight forward. Once a claim has been allowed pursuant to § 502, § 506(a) sets forth the formula to

determine secured status of that claim. A claim is secured up to the value of the collateral securing the debt and the remaining balance, if any, is treated as an unsecured claim. 11 U.S.C.

§ 506(a). The value "shall be determined in light of the purpose of the valuation and of the proposed disposition or use" of the collateral. *Id.* Thus, a claim may be valued at different times for different purposes. A deficiency claim purportedly represents the portion of the allowed claim that was effectively unsecured by the value of the collateral. Thus, deficiency claims resulting from the sale of collateral often suggest a need to revalue the collateral.

The Fourth Circuit touched this issue in a recent case, *Resolution Trust Corp. v. Murray (In re Midway Partners)*, 995 F.2d 490, (4th Cir. 1993). In *Midway* a secured creditor received relief from stay approximately two years after the petition date to foreclose on the estate's principal asset, a real estate development. At the relief from stay hearing the court found the value of the asset to be \$4,815,000. At the foreclosure sale four months later, the creditor, absent any other bidders, purchased the property for \$3,180,250. After the sale, the creditor filed a proof of claim for the deficiency and the debtor objected. Ruling on the objection to claim, the Court denied the creditor's deficiency claim finding that the value of the collateral at the foreclosure was still \$4,815,000 and that "the foreclosure sale of the collateral satisfied [the] secured claim." *Id.* at 495.

Valuation of the collateral at the time of the foreclosure is key to the creditor's right to file a deficiency. *Midway* recognized that the value of collateral may change over time and that courts should not uniformly apply valuations determined at prior hearings for subsequent valuations. *Id.* at 494; *Bray v. Shenandoah Fed. Sav. and Loan Ass'n (In re Snowshoe Co.)*, 789 F.2d 1085, 1088-89 (4th Cir. 1986).

In the instant case Associates received relief from stay to dispose of the tractor securing its debt. The proceeds from the sale of the tractor did not satisfy the secured claim in full as determined in an earlier valuation hearing. Consequently, Associates filed a proof of claim for the deficiency. Under the present analysis the threshold for allowing the claim is evidence of the tractor's value upon its disposition.

**B. Valuation of Collateral.**

Pursuant to *Midway*, the valuation of the collateral at the time it is sold is the determining factor for a deficiency claim. The Code does not specify the method for valuation. The lack of guidance has led courts to adopt a variety of methods to determine the value of collateral, i.e.: published wholesale value; the average between wholesale and retail; retail; etc. See generally, *Collier on Bankruptcy*, ¶ 506.04[2] at 506-36 (and cases cited therein). These valuations are considered in light of the purpose for the valuation as required under § 506(a). *Id.* at 506-38. Thus, the same piece of collateral may be valued differently to reflect the purpose of the valuation.

This difference in valuations precipitates the deficiency claims resulting from the sale of collateral pursuant to and order granting relief from stay. Generally, the initial valuation of collateral is for the purpose of determining adequate protection for the creditor while the debtor uses the collateral. Thus, the value is determined in accordance with the debtor's use of the collateral. The valuation for use of collateral is often determined by the retail value of the asset. The reasoning being that retail value represents what the debtor would have to pay for the use of that asset outside bankruptcy. On the other hand when that same collateral is the subject of a valuation for relief from the automatic stay, the purpose of the valuation is disposition. Disposition of automobiles and other motor vehicles is generally accomplished by auctions or dealer sales. The sale price is considered the wholesale value of the item. Thus, because the original secured claim was determined according to the retail value and disposition of the collateral only generates wholesale value, there will be a deficiency representing the unsatisfied secured claim. Upon objection to the deficiency claim the court must determine the value of the collateral at disposition taking into account that purpose of the valuation is for the liquidation of the collateral.

In the present case the primary evidence of value was the valuation of the tractor 11 months prior to the auction pursuant to the relief from stay motion, the sale price of the tractor at the

auction and the valuations proposed in the pleadings. The valuations are:

- |    |                         |             |         |
|----|-------------------------|-------------|---------|
| 1. | Relief from stay        | \$57,150.00 | 9/1/91  |
| 2. | Sale price              | 36,500.00   | 8/10/92 |
| 3. | Pleadings:              |             |         |
|    | a. Associates-wholesale | 35,992.00   | 5/12/92 |
|    | b. Associates-retail    | 47,990.00   | 5/12/92 |

The adequate protection payments of \$1,673.10 per month that were ordered pursuant to a full valuation hearing on August 20, 1991 also provide some evidence of value. Subtracting the accumulated adequate protection payments from the original valuation of \$57,150.00 leaves a value of \$38,745.90. Coupling this with the actual value received at an auction and Associates own pleadings leads the court to conclude that the \$36,500.00 received at the auction was the value of the collateral at disposition.

The court does not consider any one method of valuation determinative of every case. Rather, in each case the court must consider all evidence available and make a determination based on the totality of the evidence for the purpose of the valuation.

C. Conclusion.

A deficiency claim represents that portion of the allowed secured claim that is not satisfied by the sale of the collateral. The value of the collateral at disposition is what determines the amount of a possible deficiency claim. Thus, an objection to the claim for a deficiency necessitates a valuation of the collateral involved. The Bankruptcy Code suggests that collateral may be

valued differently for different purposes. Additionally, courts have noted that previous valuations of collateral do not dictate later valuations. In the instant case the court valued the collateral for the purpose of disposition and is persuaded that the value of the collateral was \$36,500.00. Thus, Associates claim for the balance of the debt as an unsecured deficiency claim should be allowed.

It is therefore ORDERED that:

1. The claim filed by Associates Commercial Corporation on March 5, 1993 for \$23,002.21 is hereby ALLOWED; and,
2. The debtors' objection to such claim is hereby OVERRULED.

This the 18<sup>th</sup> day of August, 1993.



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George R. Hodges  
United States Bankruptcy Judge